

BOARD OF APPEALS CASE NO. 5263

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BEFORE THE

APPLICANT: Andrew Johns & Donna Ingram

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ZONING HEARING EXAMINER

REQUEST: Special Exception to allow pet grooming in the B1 District; 2237 Emmorton Road, Bel Air

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 6/5/02 & 6/12/02

HEARING DATE: August 5, 2002

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Record: 6/7/02 & 6/14/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Andrew Jones and Donna Ingram, are requesting a special exception, pursuant to Section 267-53H(4) of the Harford County Code, to allow a pet grooming facility in a B1, Neighborhood Business District.

The subject parcel is located at 2237 Old Emmorton Road, Bel Air, MD 21015 and is more particularly identified on Tax Map 56, Grid 3D, Parcel 433. The parcel consists of .0467 acres, is presently zoned B1 and is entirely within the First Election District.

Ms. Donna Ingram appeared and testified that she is the Applicant in the present case and that she is seeking a special exception to operate a pet grooming facility at the subject location. The facility currently exists and is operating without the permits required. The witness indicated that she leases 700 square feet of the existing building and has operated her pet grooming business at the subject location for some time. The witness is currently the only employee of the business which caters to an average of 4 dogs per day and 8 maximum per day. Each dog is seen by appointment only at one hour intervals. The business operates from 8:30 a.m. until 5:00 p.m. each day, 6 days per week. The witness indicated that there is sufficient parking for all of her customers. Ms. Ingram stated that dogs are cared for entirely within the interior of the building. If dogs need to be walked they are leashed and cleaned up after, including disinfectant application when necessary. No animals are kept overnight. She has two dogs of her own.

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Mr. Anthony McClune appeared and testified on behalf of the Department of Planning and Zoning. The Department recommends approval of the request, finding that the Applicant can meet or exceed all the requirements of the Harford County Code. Additionally, the Department reviewed the “Limitations, Guides and Standards” of Section 267-9I of the Harford County Code and determined that no adverse impacts would result from this special exception use at this location as opposed to a similar operation located in any other B1 zone in Harford County. Mr. McClune pointed out that this is a transition neighborhood and that other commercial uses already exist in the immediate vicinity including a day care facility, professional offices, antique store, a church and a veterinarian. Mr. McClune did think that good planning principals required that the operation remain small and recommended a condition limiting the number of groomers to two (2) maximum.

Mr. Steven J. Troy appeared on behalf of Penguin Properties, the owner of two adjacent properties and protestant in this case. Mr. Troy stated that his client was opposed to the subject use for a number of reasons. First the day care facility, Kiddie Academy, has an enrollment of 75 children and the dogs groomed at this facility, in his opinion, pose a potential threat to the children attending the day care facility. No evidence was presented, however, of any incidence involving attendees of the day care facility and any pets associated with the Applicant’s operation. Mr. Troy also said that recently, several dogs were seen coming from the building unleashed, although no eyewitness to this event was present to testify or be cross-examined.

In rebuttal, the Applicant stated that the animals seen at her facility are kept leashed at all times and are not permitted outside unleashed. Additionally, the potential threat to children at the Kiddie Academy is further mitigated by a fence that exists around the entire perimeter of that facility that would prevent any animals, in the very remote and unlikely event that they would get loose, from entering the property of the day care operation.

CONCLUSION:

The Applicants are requesting a special exception, pursuant to Section 267-53H(4) of the Harford County Code, to allow a pet grooming facility in a B1, Neighborhood Business District.

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Harford County Code Section 267-53H(4) provides:

“Pet grooming. This use may be granted in the AG, VB, B1 and B2 Districts, provided that:

- (a) The activity takes place inside a completely enclosed building.
- (b) No animals may be kept overnight, except those owned by the proprietor.”

The Hearing Examiner finds that the Applicants can meet or exceed all of the specific requirements set forth in Section 267-53H(4) set forth above. All of the pets are groomed inside the facility and no animals are kept overnight on the subject parcel.

In determining whether any particular adverse impacts are associated with a particular special exception use the Hearing Examiner is guided by the “Limitations, Guides and Standards” set forth in the Code at Section 267-9I. A discussion of those provisions follows.

Section 267-9I

- (1) *The number of persons living or working in the immediate area.*

Old Emmorton Road has been changing from residential to commercial uses. The Applicant's location is bordered by a commercial retail business on the south side, and Kiddie Academy on the north and east sides. The Applicant's proposal involves one employee and only 8 pets per day.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only of construction of such roads will commence within the reasonably foreseeable future.*

The Applicant states that her clients are handled by appointment only, one per hour for a maximum of eight (8) per day. The subject business will not significantly increase the traffic on Old Emmorton Road.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the county.*

The proposed business will service the residents in the surrounding community. This is a transition neighborhood that is experiencing steady commercialization.

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- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.***

The Health Department will address these issues during the building permit review process. There should not be a significant increase in noise from the business.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.***

The County's local Sheriffs Department and the Maryland State Police will provide police protection. Fire protection will be primarily from the Bel Air, or Abingdon Volunteer Fire Departments. The property is on public water and sewer service. The Applicant has obtained a private hauler (BFI) to dispose of the trash.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.***

Pet grooming businesses are permitted in the B1, Neighborhood Business, District as a special exception.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.***

There is a historic stone church across from the subject business that is only used a few times a year. Based on the Applicant's hours of operation and the times the church is used, there should not be an adverse impact from the business on this site. Other commercial uses have been established without impacting the church structure and/or the use of the property.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.***

This is a service use that is permitted in the B1, Neighborhood Business, District as a special exception.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.***

There are no known on-site environmental features that would be impacted by the proposal.

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(10) The preservation of cultural and historic landmarks.

The historic Church and property at the corner of Wheel Road and Old Emmorton Road should not be impacted by the Applicant's proposal.

In addition to the provisions of Section 267-9I discussed above, the standard to be applied in reviewing a request for special exception use was set forth by the Maryland Court of Appeals in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981) wherein the Court said:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any facts or circumstances negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted). These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (Emphasis in original).

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The Court went on to establish the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. At 15, 432 A.2d at 1327.

The Hearing Examiner finds that this particular use at this particular location will not have adverse impacts above and beyond those normally associated with a business use of this type regardless of its location within a B1 zone and for the reasons stated herein, recommends approval of the special exception subject to the following conditions:

1. The Applicant shall obtain all necessary permits and inspections for the use.
2. The business shall be limited to a maximum of two (2) groomers.

Date: AUGUST 26, 2002

William F. Casey
Zoning Hearing Examiner